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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Reexamination of the Comparative)
Standards for Noncommercial)
Educational Applicants)

MM Docket No. 95-31

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF COMMUNITY TELEVISION, INC.

1. Community Television, Inc. ("Community") files comments with some background in the subject of this proceeding. The principals of Community have engaged in the television broadcasting business for more than 25 years. Community is the licensee of noncommercial educational television station WATC in Atlanta, Georgia. Community's application for the initial construction permit for that station was the subject of a competing application; faced with the prospect of a lengthy comparative proceeding, the two applicants entered into a settlement which was approved by the Commission; the competing applicant, who received the initial permit, failed to construct and, with Commission approval, Community exercised its option under the settlement agreement to secure an assignment of the permit. Community constructed the station, which has been operating now for approximately three years. In addition, Community or affiliated entities currently have pending applications for new-station construction permits in several other communities, in some instances involving competing applications.

2. Traditional comparative hearings (rulemaking notice at

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¶¶8-9). Community opposes continuation of a comparative hearing procedure, for two reasons. One, the factors under the historical comparative hearing procedure were subjective and made it exceedingly difficult to prepare for and go through the hearing, or even to evaluate the chances of winning or losing. Two, the costs are prohibitive, especially for noncommercial educational parties.

3. Lottery or point system (notice at ¶¶10-19, 20-28). Community has had experience with lotteries in the low power television-TV translator area. Its counsel has had experience with a point system in the ITFS area. Either is preferable to traditional comparative hearings. In either case, the key issue is the weighting system that is employed. We comment on that subject in the following paragraphs. The lottery has an advantage over the point system in that there is no possibility of a tie.

4. Diversification of ownership (notice at ¶¶12-14). Whether under a lottery or a point system, there should be an incentive to a party who has no other broadcast interest in the community or market for which application is made. This may be expressed as a point of preference for such applicant, or a demerit to the applicant who has such an interest. Such a policy should not adversely impact state-wide educational broadcasting programs, particularly with the adoption of the principle discussed in the following paragraph.

5. Other broadcast interests (notice at ¶¶12-14). In

promoting diversity of ownership of media of mass communications, the Commission has historically favored applicants who have no (or fewer) other broadcast interests over applicants who have some (or greater) other broadcast interests. This has tended to attract, and grant permits to, applicants who are not experienced broadcasters and to drive out applications from veteran broadcasters. In the commercial comparative arena, the added gloss of requiring the owner to personally manage the station, to the exclusion of any other ownership-management arrangement, led the court to strike down that policy as arbitrary. Bechtel v. FCC, 10 F.3d 875 (1993). While the court's opinion is widely thought of as dealing with the ownership-management "integration" requirement, the opinion is also critical of unduly downgrading the value of experienced professional broadcasters.

6. Whether the lottery or point system is used, as a minimum matter, there should be no penalty for a party that has other broadcast interests so long as they are not located in the community or market in question. Consideration should also be given to establishing a "plus" factor for experienced professional broadcasters. A complex grid of weighted credits depending on the level or length of employment experience, etc. etc. is not feasible. However, the most relevant experience pertinent to the noncommercial educational comparison is prior experience in the operation of a noncommercial educational broadcast station. We suggest that a credit be given to an applicant having a principal (e.g., at least 10% stockholder or

equivalent in non-stock entity) having at least three years experience as such a principal in an operating noncommercial educational broadcast station. A single credit should be given regardless of the number of qualifying principals may be involved in an application.

7. Composition of the applicant's board (notice at ¶¶15-16). The Commission has an entry level requirement pertaining to the composition of the board of entities that apply for noncommercial educational frequencies. To go beyond that level and structure a grid of either plusses or minuses depending on the details of the composition of the board would bog the process down in subjective determinations that have plagued the comparative hearing process.

8. Windows with limits on number of applications filed (notice at ¶18). Prior to the advent of the five-application-per-window procedure in low power television, the Commission was inundated with parties filing large numbers of applications. That procedure appears to have worked well, both in terms of managing the Commission's workload and avoiding mass filings.

9. Comparative coverage (notice at ¶¶21-23). We oppose the idea of granting a plus for superior comparative signal coverage. To be meaningful, a comparison of signal coverage requires some analysis over and above the population and area statistics, especially the number of other existing services available to populations and areas in question. Also, there is always the risk that a party will "over-propose" its facilities in the

application stage and then undertake to "downgrade" its facilities in the construction stage. While there are remedies to address that practice, the door should not be opened in the structure of the comparative selection mechanism.

10. Fair distribution of service (notice at ¶21). The proposal to grant credit for providing the first or second noncommercial educational service received in a community seems sound; the proposal to grant credit for providing the first service licensed to a community is not. This will motivate applicants to select a qualifying community anywhere within their service area simply to obtain the credit. In the comparable 307(b) process for commercial stations, this has led, as an example that can be multiplied in markets all over the nation, to the licensing of highly-rated WPGC-FM in the Washington, D.C. market to the community of Morningside, Maryland, 1990 United States Census population 930.

11. Minority control credit (notice at ¶24). Until and unless the decision in Aderand Constructors v. Pena, 515 U.S. 200 (1995) is reversed, it would be unlawful to grant such a credit.

12. Educational presence credit (notice at ¶24). As we understand this concept, an established local organization, such as an accredited school, would be given a credit vis-a-vis a new local organization or a distant organization, whether an accredited school or other noncommercial educational entity. The benefits of this are problematical. While there is benefit to a local school acquiring a broadcast facility, the impact of

schools on the life of the community is a major one to start with, and there is benefit to having an alternative noncommercial educational voice in the community, whether local or distant. We oppose such a credit.

13. State-wide plan credit (notice at ¶24). So long as the application in question seeks the first local outlet for the state-wide operation, we have no objection to the idea of such a credit. If the state-wide operation already has a local outlet, for reasons stated in ¶4 of these comments, it should receive a demerit rather than a credit.

14. Representativeness credit (notice at ¶24). We have concerns with this concept for the reasons expressed in ¶7 of these comments. The Commission should continue to apply an entry-level requirement with regard to local representation, and avoid the subjective process of making value judgments over and above that entry-level requirement.

15. Holding period (¶¶29-33). In our experience and to our knowledge, frequent turnovers in the ownership of noncommercial educational stations have not been a problem, in contrast with the commercial field where the going market prices of broadcast stations vastly exceed the initial investment in the permit and construction. Accordingly, a mandated holding period seems unnecessary here.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke extending to the right.

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